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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/370,736	08/09/1999	ZEV ROSENBERG	ROSB16062	8435

7590 04/25/2005

HELFGOTT & KARAS PC  
EMPIRE STATE BUILDING 60TH FLOOR  
NEW YORK, NY 101180110

EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/370,736

Applicant(s)

ROSENBERG, ZEV

Examiner

Janet M. Wilkens

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-14 and 16-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 9-14, 16-19, 21-23 and 25 is/are rejected.
- 7) ☒ Claim(s) 24, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Drawings***

In the remarks, it is stated that a substitute drawing sheet was submitted with the amendment. However, no such sheet is present in the application. Re-submission is required. Any inconvenience is regretted.

As a result, the drawings are still objected to because in Fig. 1 there is a question mark pointing to one of the features. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claim 10, the scope of the claim is unclear. Namely, the preamble is directed only to a metal stud; while the body of the claim is directed to both the stud and a feature, i.e. a first retainer, of a channel member. Furthermore, claim 13 positively claims a second retainer.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kostecky. Kostecky teaches a metal stud (21; Fig. 1) having a central column portion with an alignment slot (25) formed in a end portion thereof and side walls. Attached to the stud is a channel member (9) with a first retainer (23, 24). Furthermore, the inner side wall of the column portion includes an indented portion (longitudinal groove shown in Fig. 1). Note: limitations found in "for"/intended use statements have been given no weight in the claims.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Goldsmith. Goldsmith teaches a metal wall frame system (Fig. 1) comprising: a metal channel (20,26,28) having a floor portion (26), a pair of side walls (20,28), a series of stops/upstanding tabs (52), and a series of retainer members (25) and a series of metal studs (55,60) interconnected to the channel member, each having an alignment slot (31), receiving one of the retainer members (at 24) and being butted against one of the stops (see Fig. 2).

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Satchell. Satchell teaches a metal wall frame system (Fig. 1) comprising: a metal channel member (10) having a floor portion, a pair of side walls, a series of stops (inner ends of 12 adjacent 13) and a series of retainer members (13); a series of metal studs (11) interconnected to the channel member, each having an alignment slot (14 or slot formed adjacent 20), receiving one of the retainer members (at 20) and being butted against one of the stops (see Fig. 1); and a series of spacer bars (17) with projections (18) received in a socket (21) on an adjacent stud .

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldsmith in view of Smolik. Goldsmith teaches a metal wall frame system (Fig. 1) comprising: a metal channel member (20,26,28) having a floor portion (26), a pair of side walls (20,28), a series of stops/upstanding tabs (52), and a series of retainer members (25) and a series of metal studs (55,60) interconnected to the channel member, each having an alignment slot (31), receiving one of the retainer members (at 24) and being butted against one of the stops (see Fig. 2). For claims 17 and 21, Goldsmith fails to teach crimp portions on the side walls. Smolik teaches crimp portions (35A,35B) on the side walls of a channel member for holding a stud onto the channel member. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the channel member of Goldsmith by adding crimp portions on its sidewalls adjacent the sidewalls of the studs, such as is taught by Smolik, to further strengthen the stud/channel member connections, to provide retainers adjacent the side walls of the studs, etc.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldsmith in view of Satchell. Goldsmith teaches the limitations of claim 16, as stated above. For claims 22 and 23, Goldsmith fails to teach spacer bars interconnecting adjacent studs. Satchell teaches a metal wall frame system (Fig. 1) having a series of spacer bars (17) with projections (18) received in a socket (21) on an adjacent stud. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame system of Goldsmith by adding spacer bars

between the studs, such as is taught by Satchell, to further strengthen the wall frame system.

Claims 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldsmith in view of Smolik and further in view of Satchell. Goldsmith in view of Smolik teaches the limitations of claim 17, as stated above. For claims 18 and 25, Goldsmith in view of Smolik fails to teach spacer bars interconnecting adjacent studs. Satchell teaches a metal wall frame system (Fig. 1) having a series of spacer bars (17) with projections (18) received in a socket (21) on an adjacent stud. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame system of Goldsmith in view of Smolik by adding spacer bars between the studs, such as is taught by Satchell, to further strengthen the wall frame system.

#### ***Allowable Subject Matter***

Claims 24, 26 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 9 and 11-13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 20 is allowed.

***Response to Arguments***

In the previous Office action, it was indicated that claims 10, 16, 17, 19 and 20 contained allowable subject matter. However, because of changes to the claims and subsequent review of the cited prior art, it was found that only in claim 20 was this still the case and rejections have been applied as stated above. Note: in claim 10, the first retainer limitation is new (not found in old claims 8 and 10) and in claims 16, 17, 19 and 20, the alignment slot no longer specifically receives the retainer member (as it did in old claim 15).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

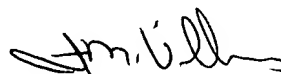


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens  
April 1, 2005

  
JANET M. WILKENS  
PRIMARY EXAMINER  
AU 3637